

Remarks:

Claims:

By the present amendment, claims 25, 27, 29, 31, 32, 35, 40 and 43 have been amended to more particularly and distinctly define the invention. New claim 47 has been added to claim a particular embodiment of the invention. Claims 26, 28, 30, 33-34, 36-39, 42 and 44-46 have been cancelled as being drawn to a non-elected invention. Applicant reserves the right to prosecute these claims in one or more divisional applications.

Claims 25, 27, 29, 31, 32, 35, 40, 41, 43 and 47 are pending. The number of total claims and independent claims remains less than the number previously paid for.

Support for the amendments is either apparent, or is as indicated below. Support for recombinant polypeptide can be found, for example, at page 1, line 9; page 3, lines 15-18, page 10, lines 15-21 and page 11, lines 15-19. No new matter is added.

Reconsideration of the rejections is respectfully requested.

Claim Rejections - 35 U.S.C. §112, First Paragraph -Written Description

Claims 25, 27, 29, 31, 35, 40, 41 and 43 stand rejected under 35 U.S.C. §112, first paragraph based on an assertion that the claims contained subject matter that was not described in the specification in such a way as to reasonably convey to one of skill in the art that the inventor, at the time the application was filed, had possession of the claimed invention. In particular, the Examiner asserted that the specification does not teach a fragment of SEQ ID NO:2 and the properties of the fragment. The Examiner further alleges that the specification fails to teach the structure or relevant identifying characteristics of fragments of SEQ ID NO:2, sufficient to allow one of skill in the art to determine that the inventor had possession of the invention as claimed.

Applicant respectfully disagrees. Applicant submits that the Notice, entitled, "*Guidelines for Examination of Patent Applications under the 35 U.S.C. 112, ¶1. Written Description Requirement*" at p. 1104, vol. 66, no. 4 (January 5, 2001) addresses the written description provision as follows (emphasis added):

An applicant shows possession of the claimed invention with all its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed

invention. Possession may be shown in a variety of ways including description of an actual reduction to practice, or by showing that the invention was “ready for patenting” by the disclosure of drawings or structural chemical formulas that show that the invention was complete, or by describing distinguishing characteristics sufficient to show that the applicant was in possession of the claimed invention.

Applicant notes that the specification discloses an immunogenic fragment of a BASB047 polypeptide, that is a contiguous portion of the BASB047 polypeptide which has the same or substantially the same immunogenic activity as the polypeptide comprising the amino acid sequence of SEQ ID NO:2 at, for example, page 5, lines 5-9. In addition, the specification further describes preferred fragments including an isolated polypeptide comprising amino acid sequence having at least 15 or 20 contiguous amino acids of SEQ ID NO:2 at, for example, page 9, lines 7-11. Applicant submits that these recitations of the immunogenic fragments, coupled with the disclosed amino acid sequence of SEQ ID NO:2 establish possession of the invention by showing that the invention was “ready for patenting” by the disclosure of structural chemical formulas that show the invention was complete. Moreover, it is noted that the amendments to claims 25 and 31 more closely comport with the recitations in the specification, *supra*.

Accordingly, reconsideration of the Written Description Requirement rejection under 35 U.S.C. 112, ¶1 is respectfully requested.

Claim Rejections - 35 U.S.C. §112, First Paragraph - Enablement

Claims 25, 27, 29, 31, 35, 40, 41 and 43 stand rejected under 35 U.S.C. §112, first paragraph based on an assertion that the specification, while being enabling for a polypeptide comprising the sequence of the amino acid SEQ ID NO: 2 and a fusion protein comprising the amino acid sequence SEQ ID NO:2, does not reasonably provide enablement for an isolated polypeptide that comprises a fragment of at least 15 or 20 amino acids, fusion protein or vaccine composition comprising said fragments.

Without conceding the correctness of the rejection, Applicant has amended claims 25 and 31 to more particularly and distinctly claim its invention. Applicant submits that the claims as amended enable the skilled artisan to practice the claimed invention. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. 112, first paragraph are respectfully requested.

Claim Rejections - 35 U.S.C. §102(b) - Martin et al.

Claims 25, 27, 29, 31, 35, 40 and 41 stand rejected under 35 U.S.C. §102(b) as being allegedly anticipated by Martin et al. (J. Ex. Med. Volume 185, No. 7, April 7, 1997, 1173-1184).

Without conceding the correctness of the rejection, Applicant has amended the claims to recite an isolated, recombinant polypeptide. It is respectfully submitted that the claims as amended are distinct from the subject matter disclosed in Martin et al. Reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b) are respectfully requested.

FEE DEFICIENCY

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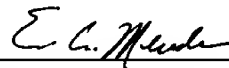
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Closing Remarks

Applicant thanks the Examiner for the Office Action and believe this response to be a full and complete response to such Office Action. Accordingly, favorable reconsideration in view of this response and allowance of the pending claims are earnestly solicited.

Respectfully submitted,



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